IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 14 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?No.

2 To be referred to the Reporter or not ?No.

3 Whether their Lordships wish to see the fair copy of the judgment ?No.

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?No.

5 Whether it is to be circulated to the civil judge ?No.

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STATE OF GUJARAT - Appellant(s)
Versus
YOGESHCHNADRA SHANTILAL SHAH - Opponent(s)

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Appearance :
Ms. Falguni Patel, A.P.P. for Appellant(s) : 1,
MR NILESH A PANDYA for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 09/02/2007

ORAL JUDGMENT

1. The acquittal of the respondent(original accused) of the offences punishable under Sections 420, 447,

465 and 468 of the Indian Penal Code recorded by the learned Judicial Magistrate, First Class, Vadodara, in Criminal Case no.1589 of 1989 vide judgment and order dated 10th October, 1994 is the subject matter of challenge in the present appeal by the State of Gujarat, which is filed under Section 378 of the Code of Criminal Procedure, 1973.

2. The case of the prosecution, briefly stated, is that the complainant-Jaswantrav Ramchandra Chauhan was the President of Prabhat Colony Co-operative Housing Society situated at Vaghodia Road, Vadodara, while the respondent-accused-Yogeshchandra Shantilal Shah was a member of the said society. According to the prosecution, the respondent-accused had under the pretext that he wants to carry out some work at the Office of the District Registrar asked for some blank printed and signed letter heads of the society from the complainant and the complaint had given the same to the respondent-accused in good faith. It is further the case of the prosecution that on 16-4-1989 the accused illegally prepared sham and bogus document of sale by using the said letter heads and in that he got land admeasuring 41 ft. x 31ft. belonging to the said

society registered in his name without payment of any consideration whatsoever. The respondent had filed a Lavad (Arbitration) Case no.618 of 1988 before the Board of Nominees for declaration of title of the said land. Thereupon, realizing that the respondent-accused had prepared false documents in the manner as narrated above obtained certified copy of the same and lodged private complaint before the Court of learned Judicial Magistrate, First Class, Vadodara, who by his order forwarded the complaint to Vadi Police Station under Section 156(3) of the Criminal Procedure Code which was registered as M. Case no.14 of 1988. PSI Vadi Police Station investigated the complaint. At the conclusion of the investigation, the Investigation Officer filed charge-sheet against the respondent-accused for the offences punishable under Sections 420, 447, 465 and 468 of the Indian Penal Code. The learned J.M.F.C., Vadodara, before whom the case was committed for trial framed charge Exh.4 for the aforesaid offences. The charge was read over and explained to the respondent who pleaded not guilty to the same and claimed to be tried. Therefore, the prosecution examined the complainant-Jaswantrav Ramchandra Chauhan and four other witnesses, as well

as produced documentary evidence,namely, complaint Exh.27, certified copy of the judgment of the Board of Nominees Exh.24, certified copy of the plaint in Lavad Case no.618 of 1988 filed before the Board of Nominees, copy of the sale deed mark A-C, certificate of Prabhat Colony Co.op.Housing Society Exh.23, resolution passed by Prabhat Society at Exh.42 etc. After recording of evidence of prosecution witnesses was over, the learned Judicial Magistrate recorded the statement of the respondent-accused under Section 313 of the Code of Criminal Procedure. In his statement, the respondent-accused denied the case of the prosecution. According to him, he is the legal owner of the disputed suit land around which he had put up fencing. It is his (respondent's) case that the complainant had in fact sold one and the same plot of land to several persons against which he had filed complaint with the Government, and therefore, in order to harass him (the respondent), such false complaint is filed by the complainant. It was also his case that the disputed plot was not allotted to Nitin Shantilal Mehta and Vrushak Shantilal Mehta was a neighbour and member of Prabhat Colony Co-op-. Housing Society. However, the respondent did not examine any witness in

support of his defence. On appreciation of evidence led by the prosecution, the learned J.M.F.C., has acquitted the respondent vide judgment and order dated 10th October, 1994, giving rise to the present acquittal appeal.

3 Ms. Falguni Patel, learned A.P.P. after taking this Court to the entire evidence on record vehemently argued that the evidence of the complainant is fully corroborated by the documentary evidence, and therefore, the learned J.M.F.C., has not properly appreciated the evidence on record and arrived at a wrong conclusion in acquitting the respondent-accused. According to her, the learned J.M.F.C., has placed too much reliance on the say of the accused and discarded the evidence of the complainant and other witnesses on the grounds contrary to the well settled principles of appreciation of evidence, and therefore, the appeal should be accepted.

4. Mr. Nilesh Pandya learned Counsel for the respondent-accused urged that no cogent and reliable evidence has been led by the prosecution to establish that the respondent-accused had got prepared false document of sale, and thereby, got the disputed suit

land registered in his name by illegal means. According to the learned Counsel as the evidence of the prosecution witnesses do not inspire confidence, the appeal should be dismissed.

5. This Court would now proceed to examine the evidence of the witnesses mainly relied upon by the prosecution for the purpose of deciding this appeal. While scrutinizing the evidence of the complainant-Jaswantrav Ramchandra Chauhan (Exh.22), we find that in his examination-in-chief he has in clear terms stated that the blank printed letter heads of Prabhat Colony Co-mousing's Society duly signed by him were handed over to the respondent-accused for the purpose of providing pipeline to the society. It is rather surprising that this fact is nowhere reflected in the complaint and for the first time stated on oath before the Court. Exh.45 is the copy of the judgment delivered by the Board of Nominees in Lavad (Arbitration) Case no.618 of 1988 which has been filed by the respondent-accused against Prabhat Colony Co-op. Housing Soceity. This suit is decreed in favour of the plaintiff (respondent-accused herein) on 25-8-1992 and it is declared that the disputed suit land bearing Block no.42/B admeasuring east to West 39.5 ft. and

North to South 30.5 ft. is of the legal ownership of the respondent-accused and that the defendant-Society is restrained from transferring, assigning, selling the same to any other person or disturbing the peaceful possession of the respondent-accused of the disputed suit land. It is also borne out from the record that the document of sale Mark A-C has been registered in the name of the respondent-accused Yogeshchamdra Shantilal Shah after initiating of proceedings before the the Nayab Collector, Collector and Secretary prior to filing of the Lavad (Arbitration) case. The complainant in his evidence has admitted that several civil/criminal cases are pending against him for illegal sale of one and the same plot of land to different buyers.

6. Nitinkumar Shantilal Mehta in his evidence at Exh.31 has stated that he became a member of Prabhat Colony Co-op. Housing Society in the year 1982 and that there is no encroachment over his plot of land. In his cross-examination he has merely stated that the President has allotted the same plot to the accused as well as to him. According to him, the respondent-accused has encroached upon the land allotted to his brother-Vrushak.

7. Vrushak Shantilal Mehta in his evidence at Exh.33 has stated that he became a member of Prabhat Colony Co-op. Housing Society in the year 1985 that he has made payment of Rs.20,000/-towards purchase of the disputed suit land, but he does not know whether he made payment by cash or by cheque. He has not made any construction over the disputed suit land till 1994. He has no knowledge whether resolution is passed by the Society in connection with sale of the disputed suit land. This witness in cross-examination has stated that he had neither attended any meeting of Prabhat Colony Co-op.Housing Society nor was he invited to the same.. He does not know the measurement of the disputed suit land. He has also stated on oath that he is only a member on record. According to him, it was within his knowledge that the respondent-accused had encroached upon his plot of land and had put fencing around the same but he has admitted that till that date he had not filed any complaint before the police or filed any suit in the Court of law.

8. Having closely examined the evidence of the above two material witnesses as also of the complainant,with due care and caution, this Court finds that the learned J.M.F.C., Vadodara, was right

in acquitting the respondent accused. In the instant case, the theory of blank printed and duly signed letter heads of the society having been used by the respondent-accused to prepare sham and bogus document of sale does not hold any water as the complainant has for the first time stated in the Court that he had handed over such letter heads to the respondent-accused for the purpose of obtaining no objection certificate for providing pipeline to the society and this fact is not reflected even in the complaint. Therefore, inference can safely be drawn that the complainant has with an ulterior motive given the letter heads to the respondent-accused. Moreover, it is not open to the complainant to say that the document of sale is sham or bogus in view of the fact that prior to the filing of the Lavad (Arbitration) Case, proceedings were initiated before the Nayab Collector, Collector and the Secretary and thereafter the document of sale in question has been got registered in the name of the respondent-accused. It is also a well settled principle of law that the genuineness of a document of sale deed can be decided only by a Civil Court or any other competent forum. The decree is passed in Lavad (Arbitration) Case

no.618 of 1988 in favour of the respondent-accused as far back as on 25-8-1992 and the respondent-accused is in possession of the disputed suit land since 12-4-1987. It cannot also be said that the two witnesses have any right title or interest over the suit disputed land for the simple reason that Nitinkumar Shantilal Mehta has categorically stated in his evidence that there is no encroachment over his plot of land while Vrushak Shantilal Mehta in his cross-examination has admitted that though it was within his knowledge that the respondent-accused had encroached over his plot of land he had not taken any steps by way of lodging any complaint before the police or filing a suit in the Court of law. He has also not joined as party in Lavad Case. According to him he is only a member on record, he had not visited the suit land, he does not know the measurement of the suit land, he has no information with regard to meetings held by the society or resolutions passed. There was no earthly reason for the witness to sit tight for all these years when his land had been encroached upon and this conduct on his part is quite unnatural. There is also no satisfactory explanation coming forth on record for the delay in filing of the complaint. It is

also on record that several civil and criminal cases are pending against the complainant in connection with sale of one and the same plot to different buyers.It is also borne out from the record that on account of misdeeds and irregularities committed by the complainant as President of the Society, the Government has appointed custodian for the administration of the Society. All these infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal more particularly, when the evidence has not inspired confidence of the learned Magistrate who had the opportunity to observe the demeanor of the witnesses. As this Court is in general agreement with the view expressed by the learned Magistrate, this Court does not feel it necessary either to reiterate the evidence or to re-state thereasons for acquittal given by the learned Magistrate. The expression of general agreement with the view taken by the learned Judge would be sufficient in the facts of the present case. This is so in view of the decision rendered in the case of State of Karnatakka vs. Hema Reddy (AIR 1981 SC 1417.

Although in an appeal from an order of acquittal, the powers of the High Court as appellate Court to re-assess the evidence and reach its own conclusion are as extensive as in an appeal against an order of conviction, yet, as a rule of prudence, the appellate Court would always give proper weight and consideration to such matters as (i) the view of the trial Judge as to the credibility of the witnesses, (ii) the presumption of innocence in favour of the accused, the presumption certainly not weakened by the fact that he has been acquitted at the trial, (iii) the right of the accused to the benefit of doubt, and (iv) the slowness of an appellate Court in disturbing the finding of fact arrived at by a Judge who had the advantage of observing the demeanor of the witnesses.

9. Thus, on overall appreciation of evidence, this Court is satisfied that there is no infirmity in the reasons assigned by the learned Magistrate in acquitting the respondent. Suffice it to say, that the learned Magistrate has given cogent and convincing reasons for acquitting the respondent and the learned A.P.P. has failed to dislodge the reasons given by the learned Magistrate in order to convince this Court to take the view contrary to the one already taken by the

learned Magistrate. The appeal, therefore, cannot be accepted and is liable to be dismissed.

10. For the foregoing reasons, the appeal fails and is dismissed.

(M.D.Shah,J.)